

GJR/da
82-82153

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ADRIAN SCHOOLCRAFT,

Plaintiff,

-against-

DECLARATION

Civil Action No.:
10 CIV 6005 (RWS)

THE CITY OF NEW YORK, DEPUTY CHIEF
MICHAEL MARINO, Tax Id. 873220, Individually
and in his Official Capacity, ASSISTANT CHIEF
PATROL BOROUGH BROOKLYN NORTH
GERALD NELSON, Tax Id. 912370, Individually and
in his Official Capacity, DEPUTY INSPECTOR
STEVEN MAURIELLO, Tax Id. 895117, Individually
and in his Official Capacity CAPTAIN THEODORE
LAUTERBORN, Tax Id. 897840, Individually and in
his Official Capacity, LIEUTENANT JOSEPH GOFF,
Tax Id. 894025, Individually and in his Official
Capacity, SGT. FREDERICK SAWYER, Shield No.
2576, Individually and in his Official Capacity,
SERGEANT KURT DUNCAN, Shield No. 2483,
Individually and in his Official Capacity,
LIEUTENANT CHRISTOPHER BROSCART, Tax
Id. 915354, Individually and in his Official Capacity,
LIEUTENANT TIMOTHY CAUGHEY, Tax Id.
885374, Individually and in his Official Capacity,
SERGEANT SHANTEL JAMES, Shield No. 3004,
AND P.O.'s "JOHN DOE" #1-50, Individually and in
their Official Capacity (the name John Doe being
fictitious, as the true names are presently unknown)
(collectively referred to as "NYPD defendants"),
JAMAICA HOSPITAL MEDICAL CENTER, DR.
ISAK ISAKOV, Individually and in his Official
Capacity, DR. LILIAN ALDANA-BERNIER,
Individually and in her Official Capacity and
JAMAICA HOSPITAL MEDICAL CENTER
EMPLOYEE'S "JOHN DOE" # 1-50, Individually and
in their Official Capacity (the name John Doe being
fictitious, as the true names are presently unknown),

Defendants.

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GREGORY J. RADOMISLI, declares the following pursuant to 28 USC §1746,

under penalty of perjury:

1. I am a Member of Martin Clearwater & Bell LLP, attorneys of record for defendant JAMAICA HOSPITAL MEDICAL CENTER and am fully familiar with the facts and circumstances of this action by virtue of a review of the file in my office.

2. This Declaration is respectfully in support of the motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure by defendant JAMAICA HOSPITAL MEDICAL CENTER ("Jamaica Hospital").

3. As discussed in detail in the accompanying Memorandum of Law, Jamaica Hospital's motion for summary judgment should be granted for the following reasons:

a) In its May 5, 2011 Order, this Court dismissed plaintiff's federal causes of action against Jamaica Hospital. The only surviving causes of action as to Jamaica Hospital are plaintiff's state law claims for medical malpractice, false arrest, false imprisonment, and negligent hiring, training or supervision;

b) The plaintiff cannot maintain a cause of action directly against Jamaica Hospital for medical malpractice because plaintiff does not make any allegations of medical malpractice as to any specific members of the Jamaica Hospital staff separate from the codefendant psychiatrists, and there are no issues of fact regarding the care rendered by the Jamaica Hospital residents;

c) The plaintiff cannot maintain a cause of action for false arrest or false imprisonment because plaintiff has not presented any evidence that Jamaica Hospital committed medical malpractice, and because plaintiff's detention was otherwise privileged;

d) The plaintiff cannot maintain a cause of action for negligent hiring, training, or supervision because plaintiff's Second Amended Complaint does not contain any allegations that the codefendant psychiatrists or any of the Jamaica Hospital staff had, or

should have known of, a propensity to improperly hospitalize patients or to commit false arrest or false imprisonment; plaintiff has not submitted any evidence of Jamaica Hospital's hiring, training, supervision or retention policies; and plaintiff has not alleged and cannot demonstrate that any of the Jamaica Hospital staff or the codefendant psychiatrists were acting outside the scope of their employment when they treated the plaintiff; and

e) The plaintiff cannot maintain a cause of action for intentional infliction of emotional distress because plaintiff cannot satisfy the elements to state a claim and because a cause of action for intentional infliction of emotional distress is duplicative, and falls within the ambit of plaintiff's claim for medical malpractice.

4. Attached hereto are true copies of the following Exhibits:

- a) Exhibit A – Plaintiff's Summons and Complaint dated August 8, 2010;
- b) Exhibit B – Defendant Jamaica Hospital's Answer dated September 7, 2010;
- c) Exhibit C – Plaintiff's Amended Summons and Complaint dated September 12, 2010;
- d) Exhibit D – Defendant Jamaica Hospital's Answer dated October 6, 2010;
- e) Exhibit E – Defendant Jamaica Hospital's Motion to Dismiss and Memorandum of Law dated January 20, 2011;
- f) Exhibit F – Opinion of The Court dated May 5, 2011;
- g) Exhibit G – Plaintiff's Second Amended Complaint dated October 1, 2012;
- h) Exhibit H – Jamaica Hospital's Answer dated October 15, 2012;
- i) Exhibit I – Order of the Court dated October 29, 2014
- j) Exhibit J – Jamaica Hospital's letter so-ordered by the Court on November 4, 2014;
- k) Exhibit K – Deposition Transcript of plaintiff Adrian Schoolcraft, dated October 11, 2012;
- l) Exhibit L – Deposition Transcripts of plaintiff Adrian Schoolcraft, dated September 26 and 27, 2013;
- m) Exhibit M – Deposition Transcript of Dr. Catherine Lamstein, dated January 30, 2014;

- n) Exhibit N – Deposition Transcript of Sergeant Rasheena Huffman, dated January 6, 2014;
- o) Exhibit O – Deposition Transcript of Lieutenant Theodore Lauterborn, dated November 7, 2013;
- p) Exhibit P – Deposition Transcript of Chief Michael Marino, dated October 8, 2013;
- q) Exhibit Q – Deposition Transcript of Lieutenant Christopher Broschart, dated June 18, 2014;
- r) Exhibit R – Deposition Transcript of Lieutenant William Gough, dated April 11, 2014;
- s) Exhibit S – Deposition Transcript of Lieutenant Elise Hanlon, dated January 13, 2014;
- t) Exhibit T – Deposition Transcript of Salvatore Sangeniti, dated May 15, 2014;
- u) Exhibit U – Plaintiff Adrian Schoolcraft's Records from Jamaica Hospital Medical Center;
- v) Exhibit V – Deposition Transcript of Dr. Khin Mar Lwin, dated July 3, 2014;
- w) Exhibit W – Deposition Transcript of Dr. Lillian Aldana-Bernier, dated February 11, 2014;
- x) Exhibit X – Deposition Transcript of Dr. Isak Isakov, dated February 12, 2014;
- y) Exhibit Y – Medical Report of Dr. Steven A Luell, dated January 25, 2010;
- z) Exhibit Z – Report and Curriculum Vitae of plaintiff's expert Dr. Roy Lubit;
- aa) Exhibit AA – Deposition Transcripts of plaintiff's expert Dr. Roy Lubit, dated September 12, November 10, and November 13, 2014;
- bb) Exhibit BB – Deposition Transcript of Dr. Indira Patel, dated July 25, 2014;
- cc) Exhibit CC – Report and Curriculum Vitae of plaintiff's expert Dr. Dan Halpren-Ruder;
- dd) Exhibit DD – Deposition Transcript of plaintiff's expert Dr. Dan Halpren-Ruder, dated September 30, 2014;
- ee) Exhibit EE - Consensus Statement on Medical Clearance Protocols for Acute Psychiatric Patients Referred for Inpatient Admissions;
- ff) Exhibit FF – Deposition Transcript of Anthony Maffia, dated May 30, 2014;
- gg) Exhibit GG – Deposition Transcript of Sergeant Shantel James, dated May 12, 2014;

- hh) Exhibit HH – Jamaica Hospital Policy regarding restraints;
- ii) Exhibit II – Deposition Transcript of Dr. Vinod Dhar, dated July 7, 2014;
- jj) Exhibit JJ – Declaration, accompanying Expert Report, and Curriculum Vitae of defendant Jamaica Hospital's expert Dr. Robert H. Levy; and
- kk) Exhibit KK – Deposition Transcript of Jessica Marquez, dated May 14, 2014.

WHEREFORE, it is respectfully requested that defendant's motion be granted in its entirety, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
December 22, 2014

Yours, etc.,

MARTIN CLEARWATER & BELL LLP

By: Gregory J. Radomisli
Gregory J. Radomisli (GJR – 2670)

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